IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7004 of 2007()

CRIME NO.666/06 OF CHALAKKUDY POLICE STATION

: APPLICANT/ACCUSED NO.11

ROBINSON @ ROBIN, S/O ANTONY,
MACHERY HOUSE, MELOOR VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, ALONG WITH BA NO. 7005 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.Nos.7004 and 7005 of 2007

Dated this the 28th day of November 2007

O R D E R

These applications are for regular bail. The petitioners are accused 9 and 11 in crime No.666 of Chalakkudy which is now being investigated for offences punishable inter alia under Sections 420, 468 and 477A I.P.C. Altogether 24 accused have been brought on the array by now. The crime has been registered on the basis of F.I statement lodged by the de facto complainant who has subsequently been transposed as the twelvth accused in the case. Both the petitioners were arrested on 30/10/2007. They continue in custody from that date.

2. The allegations originally raised in the F.I statement do not relate to either of these petitioners. Accused No.12, the original informant, had only raised allegations against the honorary Secretary/Managing Director of the Chalakkudy Urban Co-operative Society. In the F.I.statement, the de facto complainant had alleged that the said honorary Secretary/Managing Director of the Society, in collusion with his relatives and friends, is involved in acts of misappropriation, cheating etc. in respect of the funds of the society. Investigation commenced on such F.I statement.

Accused 1 to 8 shown in the F.I.R have all been released on bail.

3. It is the case of the investigating officer that in the course of investigation into that crime startling and shocking details of conspiracy, gross misappropriation, abuse of powers and siphoning out of funds of the said Society were revealed to the investigating officer. Various allegations have been raised now. To put it in a nut shell, the allegations is that the President and Board of Directors had entered into a conspiracy to siphon out funds of the society unauthorisedly and make use of the same for their partisan and personal purposes. Investigation is in progress. Some of the accused have been arrested. For one of the accused persons, a loanee, regular bail has already been granted by this court. Many other applications for anticipatory bail are pending before this court. Those applications for anticipatory bail stand posted to another date. Considering the urgency of the matter and the fact that the petitioners have been continuing in custody from 31/10/2007, these petitions have been taken up for hearing and disposal.

4. The petitioner in B.A.No.7005/2007 is the President of the said Society. He is the ninth accused. The petitioner in B.A.No.7004/07, the eleventh accused is a member of the board

of Directors. In the course of investigation, several items of culpable conduct have been identified by the investigating officer against the petitioners in these petitions. Since the F.I statement does not contain a detailed narration of the acts of culpability now raised, the learned Public Prosecutor was directed to get statements filed by the Circle Inspector of Police, who is conducting the investigation about the precise culpable acts which have now been ascertained against the petitioners. Statements have been filed by the investigating officer. Replies thereto have been filed by the accused concerned.

5. I shall not embark on a detailed discussion about the specific allegations raised and the defence pleaded by the accused. I shall broadly refer to the allegations against the President, that is the ninth accused, first.

6. The prosecution alleges that savings bank account 674 was opened fraudulently in the name of one Poly Pullan. It is the case of the prosecution that this account is opened in the fake name - in the name of a non-existent person by the 9th accused. A different incorrect name was shown for the account holder in order to put into practice the fraudulent design of the petitioner. In fact, the investigating officer initially was not sure

of the identity of the account holder. It is the petitioner, who in the course of submissions before court owned that the said account is his own. The prosecution alleges that into that account opened in a slightly different name, the petitioner herein has got credited substantial amounts by way of overdraft facility. The amounts which so came into that account were later transferred to another account in the proper name of the petitioner and such amounts were siphoned out of the bank's funds. This, it is alleged, is done by the petitioner with fraudulent and culpable motive and intention. Though, admittedly, the entire amount has subsequently been paid and the overdraft account made upto date, the prosecution alleges that conspiracy and culpable siphoning out of the funds of the Society is clearly made out from these allegations raised.

7. It is further alleged that the wives of the Directors of the Bank including the two petitioners herein had availed loans contrary to all norms and an amount of Rs.75 lakhs has been placed at the disposal of a partnership firm constituted mainly by the wives of the members of the Director Board. It is alleged that this scheme has been brought in to ensure that the funds of the Society are kept at the disposal of the Directors and their

wives. There is a further allegation that certain documents which had been deposited before the Society as security have been taken out from the Society and such properties have been disposed of contrary to all accepted norms. Various other allegations are also raised.

8. So far as the eleventh accused is concerned, the allegation of siphoning out funds of the Society in the name of a partnership firm constituted by the wives of the petitioners and other Directors is also one of the allegations.

9. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They have not acted against the interests of the Co-operative Society. Even assuming that there is any breach of the stipulations of the by-laws in the matter of granting loan etc. they cannot be reckoned as instances of any culpable conduct. On account of personal animosity and political differences of opinion, false allegations are being raised against political opponents by those in power and those who have influence in police force. In these circumstances, it is prayed that the petitioners who have remained in custody from 31/10/2007 may be granted regular bail. In any view of the matter, all the allegations can be proved

by documentary evidence and endless unlimited detention of the petitioners is not necessary for a proper investigation of the case, submits the learned counsel for the petitioners.

10. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that at this early stage of investigation, the petitioners do not deserve to be enlarged on bail. The co-accused have not been arrested. Investigation is at a very early stage. After the arrest of the petitioners on 31/10/2007, more and more instances of culpable conduct on the part of the petitioners are being unearthed by the investigating officers. Granting regular bail to the petitioners at this stage would hamper the smooth course of investigation. Influential petitioners are likely to interfere with the due course of investigation. In a serious crime like this, the investigating officers do deserve to be granted reasonable time to complete the investigation, submits the learned Public Prosecutor.

11. I have considered all the relevant inputs. At my request, the case diary has been placed before me for my perusal. I have perused the same. At this early stage of investigation, I shall not embark on a detailed discussion about the acceptability of the allegations against the petitioners or the

credibility of the data collected. Suffice it to say that an anxious perusal of the case diary as also the statements filed by the investigating officer and the submissions of the learned Public Prosecutor and the learned counsel for the petitioners must impress upon the court the need for a thorough and exhaustive investigation in this case. Indiscretion/ complicity of the petitioners is eloquently indicated from the materials presently available. I shall not proceed further and make any specific observation about such complicity lest it might affect the interests of the petitioners later. In any view of the matter, I am satisfied that this is not a proper stage at which the discretion under Section 439 can or ought to be invoked in favour of the petitioners now.

12. In the result, these petitions are dismissed. However, I may hasten to observe that the petitioners shall be at liberty to move this court for bail again at later stages of the investigation not, at any rate, prior to 12/12/2007. The investigating officer must make every endeavour to complete the investigation by then.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007